

FILED
KING COUNTY WASHINGTON
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SUPERIOR COURT CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON,

Petitioner,

vs.

Saan C. Saelee,


D.O.B. 10-5-1985,

Respondent.

CAUSE NO. 03-8-02101-8

MEMORANDUM OPINION RE
EXTENSION OF SUPERVISION
FOR PURPOSES OF
RESTITUTION IN DEFERRED
DISPOSITION CASES

Dated: 11-17-05



Judge Suzanne M. Barnett

ORIGINAL

MEMORANDUM OPINION

MEMORANDUM OPINION

This matter is before the court for resolution of issues relating to financial restitution ordered in a juvenile offender matter. The issues are (i) whether the amendments to WASH. REV. CODE ANN. § 13.40.190 (Lexis Supp 2004) [hereinafter "R.C.W."] have retroactive effect, and (ii) whether the court can extend supervision under RCW 13.40.127 for more than one consecutive term of 12 months to allow a juvenile respondent to make full financial restitution.

Based upon the analysis of counsel and the court, this court concludes that the amendments to RCW 13.40.190(1) apply retroactively to any juvenile offender case in which restitution was owing on its effective date, July 1, 2004. The court further concludes that it is within the court's discretion to extend the period of deferral for more than one consecutive 12-month term after disposition, within reason and for good cause shown.

The court will enter an order this date extending jurisdiction in the present case for up to twelve months from the last set termination date in this case, June 30, 2005. Respondent shall remain under supervision for financial monitoring only. The court will further order that the respondent be relieved of the obligation to pay the full amount of restitution previously ordered to be paid to the individual victim's insurance carrier. Respondent shall pay restitution at the rate of \$50 per month until the amount owing to the individual victim is paid in full.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

In 2003, the state charged respondent, Saan Saelee (date of birth 10/15/1985), with one count of taking a motor vehicle without the owner's permission in the second degree, occurring on or about January 22, 2003. Respondent crashed the stolen vehicle, damaging it irreparably. Respondent was 17 years old at the time of the offense.

On June 25, 2003, the court entered a finding of guilt and granted respondent's motion for a deferred disposition under RCW 13.40.127. The court imposed nine months of community supervision. A condition of that supervision and the deferral of disposition was that respondent pay the mandatory Crime Victims' Compensation fee of \$100 and financial restitution to the victim/s of the offense. On August 12, 2003, the court entered an order establishing restitution at \$13,970.15, of which \$425 was payable to the individual victim (vehicle owner) and \$13,545.15 was payable to the victim's automobile insurance carrier.

Respondent's juvenile probation counselor brought respondent before the court on two occasions alleging that respondent was not in compliance with all of the terms of his

supervision and deferral. The second requested revocation was based solely on respondent's inability to pay the restitution in full. On each occasion, the court found respondent in substantial compliance, imposed a sanction for the violations, and continued the case.

The original term of supervision ended on March 25, 2004. At that time, the respondent was in compliance with all the terms of his supervision, except the payment of financial obligations. On motion of respondent, through counsel, and in accordance with a recommendation from the juvenile probation counselor, the court extended supervision and the term of the deferral until March 25, 2005. Thereafter, respondent began making regular payments toward the financial obligations, but was unable to pay the full amount ordered. At some point, the court extended the deferral to the second anniversary date, June 25, 2005¹.

On June 3, 2005, by oral motion, respondent requested an additional extension of the deferral and abatement of the restitution payable to the insurance carrier. After argument of the issues, the court asked for and received briefing and set further argument for June 24, 2005. The June 24th hearing was continued to June 30, at which time the court requested further briefing on one of the issues, tolled jurisdiction, and after further briefing and argument, took the matter under advisement.

ANALYSIS

Restitution

The juvenile restitution statute provides that the court "[i]n its dispositional order. . . shall" require a respondent to make restitution in all cases in which the victim is entitled to benefits under RCW 7.68, the Crime Victims Compensation Act. See RCW 13.40.190(1) & (2) (*emphasis added*). Even though disposition is deferred under RCW 13.40.127, the statute mandates that the court require payment of restitution as a condition of supervision in a deferred disposition matter. RCW 13.40.127(5). Restitution in a deferred disposition is defined under the general restitution statute, RCW 13.40.190.

RCW 13.40.190 establishes the financial restitution requirements for juvenile offenders. Restitution, when ordered, is to be a joint and several obligation of all co-respondents involved in the commission of the offense. *Id.* at 13.40.190(1). Over the life of the Juvenile Justice Act, courts have differed on the extent of a respondent's obligation to make restitution to insurance carriers that compensate individual victims. The legislature amended the restitution statute, effective July 1, 2004, with respect to this issue.

¹ The record is not clear. Respondent failed to appear at one or more review hearings; it is possible supervision was tolled by the court's issuance of one or more bench warrants. In any event, on June 3, 2005, the court still had jurisdiction and respondent was still on supervision status.

Before the 2004 amendment, courts and the legislature ping-ponged the issue of whether offenders should be required to pay restitution to insurance carriers. Before 1997, the statute gave courts discretion to relieve respondents of the obligation to pay full or partial restitution upon a showing of inability to pay currently or for ten years. In 2001, at least one juvenile court asserted discretion to continue the practice of denying restitution to insurance carriers and failed to order restitution to an insurance carrier; the court of appeals disagreed with that approach. See *State v. A.M.R.*, 108 Wash. App. 9, 12-13 (2001), *aff'd at* 147 Wash. 2d 91 (2002).

In 2004, the legislature purported to reinstate judicial discretion relating to restitution, but limited that discretion to denying or abating restitution to insurance carriers. Effective July 1, 2004, the statute provides that

[a]t any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider . . . if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not have the means to make full or partial restitution to the insurance provider the restitution over a ten-year period.

RCW 13.40.190(1).

Respondent's counsel argues that this legislative change, by its language, is applicable retroactively. The state responds that the statutory amendment is not remedial but affects a victim's rights and that, therefore, the amendment cannot be applied retroactively.

The plain language of the statute suggests that the amendment is meant to apply to any ordered restitution, even that ordered before the effective date of the amendment. Further, the change in the restitution requirements relating to insurance carriers is remedial in nature. Counsel analyzed the restitution statute in its entirety, each side arguing for or against the remedial nature of restitution.² The correct approach, however, is to analyze the nature of the *amendment*, not the nature of restitution itself. Legislative history suggests that the 2004 legislature intended the amendment of the juvenile restitution statute to be remedial in nature. The legislature, by the amendments to the statute, attempted to *i)* make restitution non-mandatory in diversion agreements, *ii)* clarify and eliminate inconsistency relating to victims' counseling costs, and *iii)* provide for modification of restitution payable to insurance carriers.³

The amendment does not create or terminate any legal right; it modifies the factors the court should consider in balancing the rights of juvenile respondents and institutional

² In spite of the state's attempted analysis in this case, it is established that restitution is not punitive but remedial in nature. *State v. Hartke*, 89 Wash. App. 143, 147 (1997).

³ WASH. LEGIS. FINAL BILL REPORT, S.B. 6472, 58th Legislature, 2d Reg. Sess., March 26, 2004.

victims. The amendment is clearly intended to *remedy* an inequity in the existing statute; it is *remedial* in nature and should, therefore, apply retroactively.

While the language of the amendment purports to provide relief to respondents, in practice, it places a burden on respondents and an obligation on the courts that is so burdensome as to be practically meaningless in application. With the possible exception of respondents who present with debilitating and incurable mental health problems it is unlikely that many respondents could truthfully assert or that any court could find that any given respondent will be unable under any circumstances to pay all or part of a restitution obligation over a period of ten years. Further, when a group of correspondents are jointly and severally liable, the court is loathe to find that one among them should be relieved of the responsibility, thus potentially increasing the burden on others who, in all likelihood, are similarly situated.

In the case before the court, however, respondent has provided an affidavit that contains a complete, and realistic, projection of his future financial prospects. His income and expense projections include the costs of his continuing education, realistic job prospects when that education is completed, and modest living expenses. The respondent in this case has carried his burden and the court finds that he is not likely, in the next ten years, to be able to pay all or any portion of the \$13,000+ in restitution ordered payable to the victim's insurance carrier.⁴

The court modifies respondent's restitution obligation, reducing it to \$425, the amount due the individual victim in this case.

Deferred Dispositions

Under RCW 13.40.127, in certain cases, the court may defer disposition. The statute requires that the court "shall" impose a term of community supervision and "shall" require payment of restitution under RCW 13.40.190 as a condition of supervision. *Id.* at 13.40.127(5). The juvenile must stipulate to admissibility of facts in a written police report and waive the right to fact-finding and associated trial rights in the event the juvenile fails to comply with the conditions of supervision. The statute provides juveniles an opportunity to avoid a criminal record. If the juvenile is successful in complying with the court's conditions, at the conclusion of the term of supervision, the court dismisses the charge(s), expunges the guilty finding, and the juvenile has no criminal record relating to the charged offense.

On motion by the prosecuting attorney or the probation counselor during the course of supervision, the court has discretion to determine whether the juvenile is in compliance with the terms of supervision. The court shall enter an order of disposition for a juvenile who is not in compliance. The court's intermediate rulings relating to compliance with

⁴ The court ordered this respondent and one co-respondent jointly and severally liable for restitution in this incident. The co-respondent has made no payment toward restitution to date. Relief, or partial relief, for the co-respondent in light of the court's modification of restitution in this case is not an issue before the court at this time.

the terms of supervision are not reviewable at the conclusion of the deferral period. *Id.* at 13.40.127(7).

The statute, in subsection (9), provides that,

[a]t the conclusion of the period set forth *in the order of deferral* and upon a finding by the court of full compliance with conditions of supervision and *payment of full restitution*, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice.

Id. at 13.40.127(9) (*emphasis added*). The enabling language provides that the court may defer disposition for a period not to exceed one year from the date of the guilty finding. *Id.* at 13.40.127(2). Notwithstanding the express statutory language referring to "the period set forth in the order of deferral", the statute also provides that

[a]t any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

Id. at 13.40.127(8). This provision clearly provides for adjustment of the period of deferral in the discretion of the court.

The statute does not define "good cause". This court's experience, however, is that juveniles or their probation counselors generally seek extensions of supervision to enable respondents to stabilize living conditions, recommence educational programs, continue or complete counseling or treatment, or to meet financial obligations. Given the purposes of the Juvenile Justice Act⁵, these goals of supervision certainly qualify as "good cause" to extend supervision and expand the respondent's chances for a clean criminal record, not to mention personal rehabilitation.

The statute is ambiguous with regard to whether "an additional one-year period" refers to one year in addition to the initial term, which may be anything up to but not exceeding one year, or "an additional one-year period" from the maximum allowed in subsection (2), or, as this respondent argues, "an additional one-year period" from the date of any compliance review hearing. Given the statutory ambiguity, this court is inclined to interpret the statute in the manner most favorable to the respondent and extend the time

⁵ RCW 13.40.010(2). The "equally important purposes" of Juvenile Justice Act of 1977 are:

- (a) protect the citizenry from criminal behavior;
- (c) make the juvenile offender accountable for his or her criminal behavior;
- (d) provide for punishment commensurate with age, crime, and criminal history of the offender;
- (f) provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) provide for handling of juveniles by communities whenever consistent w/ public safety;
- (h) provide for restitution to victims of crime;
- and
- (k) encourage the parents, guardian, or custodian of the juvenile to participate actively in the juvenile justice process.

for him to meet his financial obligations. This result seems also to be most in conformity with the coequal purposes of the Juvenile Justice Act to rehabilitate juvenile offenders who are not menacing society with continuing offending behaviors and to hold them accountable to victims by making financial restitution.

This juvenile respondent, while admittedly slow to come into complete compliance with the terms of his supervision, has remained in compliance and made regular monthly payments toward his financial obligations between summer 2004 and the date this matter came before the court for consideration. He has no other criminal law referrals or legal filings. As a child of non-English speaking parents, he is completing his high school education and is on track to pursue post-secondary education. This respondent is willing and able to continue his pattern of performance in pursuit of the goal of dismissal of the original charge and expungement of the guilty finding.

The court extends respondent's term of deferral for up to an additional twelve months from the second anniversary of the order granting the deferred disposition. The court extends supervision for purposes of financial monitoring only. If any restitution is owing, the court modifies the rate of payment to \$50 per month with the first payment being due 30 days after the date of entry of an order herein.

Constitutionality

It is incumbent on a court to resolve any justiciable controversy, if at all possible, without reference to constitutional interpretation. While this court has attempted to resolve this conflict in the most just and equitable way by statutory interpretation, the court acknowledges that the statutes do not demand this court's particular conclusions. Respondent's counsel raised a constitutional issue in passing⁶ and the prosecuting attorney, in response, dismissed the issue⁷. The constitutional issue cannot be so easily raised or dismissed.

This court believes there is a constitutional issue inherent in this controversy. In the event an appellate court does not affirm the statutory analysis, the outcome is nonetheless appropriate under a constitutional analysis of the statute and its implications.

Background

The grant or denial of a deferred disposition lies within the discretion of the juvenile court. RCW 13.40.127. In King County, the prosecuting attorney files an average of

⁶ "It cannot be a benefit . . . to deny a respondent . . . the promised dismissal because of a lack of resources, particularly when a wealthy family would simply be able to pay the full amount and therefore secure dismissal." Respondent's initial brief, p. 5.

⁷ The State argued that (1) a deferred disposition is a "statutory mechanism" of relief, not a constitutional right or liberty interest and (2) the court's exercise of discretion obviates the possibility of a disparate effect on similarly situated juveniles. For the latter point, the State suggests that the court can simply deny a deferred disposition to a juvenile who lacks the resources to meet the restitution obligation. See State's response brief, pp 7-8.

4,832 juvenile offender cases per year.⁸ The court grants respondent's motion for deferral of disposition in an average of 775 cases per year. The average number does not, however, reflect what appears to be a trend. The court granted deferred dispositions in 14.3% of cases filed in 2002, 15.7% of cases filed in 2003, 18.1% of cases filed in 2004, and 24.8% of cases filed between January and June of 2005. Either more juveniles are statutorily eligible for deferral of disposition each year or the court has, in its collective discretion, become more generous in granting deferrals to juveniles who are statutorily eligible, but who might not have been granted the opportunity previously.

The state routinely objects to a respondent's motion for a deferred disposition in cases in which the amount of financial restitution is likely to be high. Arguing that the restitution is too great for the respondent to pay within the usual two-year time frame of a deferred disposition⁹, the state urges the court to deny the respondent an opportunity that might provide for both rehabilitation and accountability, *viz.*, the deferral authorized by statute. In the cases in which the state objects on the basis of the amount of restitution, it does so seemingly without reference to the financial circumstances of the individual respondent or his or her family, and without reference to whether the court determines that one or more co-respondents are jointly and severally liable for the same obligation.

Equal Protection

For an equal protection analysis, the court must determine whether the statute at issue creates a classification based on certain characteristics of those to whom it applies, if the statute impinges or impairs a fundamental right, or if it does neither of those, if it bears a rational relationship to a legitimate public purpose. In conducting an equal protection analysis, courts review statutes based upon their purposes and effects.

Suspect classification – strict scrutiny

If a statute classifies those to whom it applies based upon characteristics that are unrelated to its purposes or if it affects a fundamental right, then the courts subject the statute to strict scrutiny. *See, e.g., State v. Roberts*, 77 Wash. App. 678, 683 (1995) (*factors such as race, nationality, or wealth should not influence imposition of sentence*); *see also, Thurston v. Greco*, 78 Wash. 2d 424, 432 (1970 *en banc*) (*strict scrutiny applies to suspect classification or impingement of fundamental interest*) (*concurring opinion*). To survive that strict scrutiny, the statute at issue must be found to serve a compelling state interest. *Washington v. Osman*, 126 Wash. App. 575, 108 P.3d 1287, 1291 (2005) *citing State v. Smith*, 117 Wash.2d 263, 277 (1991) and *State v. Phelan*, 100 Wash. 2d 508, 512 (1983).

⁸ This average is based on actual filings for the calendar years 2002 through 2004 and an estimate for 2005 based on filings at mid-year.

⁹ The two-year time frame, which has been generally but not universally observed in this court, can be assumed for purposes of this analysis, notwithstanding the court's earlier interpretation expanding the conventional two year maximum.

The Juvenile Justice Act applies to offenders under the age of 18 years. Clearly, it does classify juvenile offenders and the act has withstood the strict scrutiny of the courts because it acknowledges and addresses the need to involve the juvenile, his or her family, and the community in the juvenile's rehabilitation¹⁰. Courts have definitively held that separate laws relating to the rehabilitation and accountability of juvenile offenders do not involve a suspect classification. *Boot and Cornejo v. State*, 130 Wash. 2d 553, 572-73 (1996, *en banc*).

The deferred disposition alternative is a part of the Juvenile Justice Act, and it appears on its face to conform to and to promote the goals and purposes of the act. The pertinent question in analyzing the application of the deferred disposition statute, however, is not all juvenile offenders. Not all juvenile offenders are statutorily eligible for a deferred disposition. The classification to be scrutinized is that required by the deferral statute.¹¹ The eligibility criteria described in the statute appear to be rationally related to the classification.

The "hidden" criterion, however, the requirement of payment of full restitution, requires a characteristic of wealth, or at least financial means, for entry into the class. See RCW 13.40.127(9). Nothing in the statute requires means testing, yet the prosecuting attorney and the juvenile's own counsel are constrained to recommend or withhold recommendation to the court based on the amount of restitution that might be payable and on the juvenile's ability to pay. In most cases, the actual consideration becomes one of the juvenile's family's ability to pay.

The ultimate decision to grant or deny the deferral opportunity lies, of course, in the sound discretion of the court. Nothing in the statute requires or permits, nor could it permit, means testing by the court in making its determination. The financial ability characteristic implied by the deferred disposition statute places the court in the

¹⁰ RCW 13.40.010(2). The "equally important purposes" of Juvenile Justice Act of 1977 are:

- (a) protect the citizenry from criminal behavior;
- (c) make the juvenile offender accountable for his or her criminal behavior;
- (d) provide for punishment commensurate with age, crime, and criminal history of the offender;
- (f) provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) provide for handling of juveniles by communities whenever consistent w/ public safety;
- (h) provide for restitution to victims of crime; and
- (k) encourage the parents, guardian, or custodian of the juvenile to participate actively in the juvenile justice process.

¹¹ RCW 13.40.127(1) provides that

- [a] juvenile is eligible for a deferred disposition *unless* he or she:
 - (a) Is charged with a sex or violent offense;
 - (b) Has a [felony] criminal history. . . ;
 - (c) Has a prior deferred disposition. . . ; or
 - (d) Has two or more adjudications.

The deferral statute further requires that the court ascertain that the juvenile has the support of parent/s or guardian/s. *Id.* At 127(2).

untenable position of having to grant or deny a significant opportunity, one that could ultimately affect a juvenile's fundamental liberty interest, on a supposition of wealth.

Wealth or financial means is a characteristic unrelated to the opportunity to clear one's criminal record. It is clear that making financial restitution to offense victims is a legitimate, stated purpose of the Juvenile Justice Act. The legislature has clearly stated that *equally important* purposes include *inter alia* protecting the citizenry from criminal behavior, holding the juvenile offender accountable, providing for punishment commensurate with age, crime, and criminal history of the offender, providing necessary treatment, supervision, and custody for juvenile offenders, handling of juveniles by communities whenever consistent w/ public safety, and encouraging parents, guardians, or custodians to participate actively in the juvenile justice process. All of those purposes can be served by the deferred disposition alternative, with or without wealth.

Certainly, accountability and restitution should not be suspended in order to meet the goals of the deferred disposition. In other juvenile offender matters, however, restitution obligations continue and follow juveniles into adulthood in the form of civil judgments. A balancing of the purposes of the Juvenile Justice Act would seem to suggest that juveniles who comply with all the requirements of the deferred disposition statute, except acquiring the characteristic of wealth, should not be denied the benefit of the deferred disposition because of their own inability, or the inability of their families to acquire sufficient wealth to satisfy "full restitution" within an arbitrary statutory timeframe.

Liberty right – intermediate scrutiny

Statutes are subjected to an intermediate level of scrutiny if they impair or impinge upon the liberty rights of those who are not accountable for their status but nonetheless subject to "semi-suspect" classification. *State v. Harner*, 153 Wash. 2d 228, 235 (2004); see *State v. Osman*, 108 P.3d at 1291, citing *State v. Smith*, 117 Wash. 2d 263, 277 (1991). To pass intermediate scrutiny the subject statute must be seen as furthering a substantial interest of the state. See *Osman*, 108 P.3d at 1291.

The state argues that the deferred disposition statute does not have any impact on a juvenile's fundamental rights arguing that there is no right to a deferral. Citing *State v. Harner*, the state asserts that a deferred disposition is a statutory privilege to be granted or withheld on a case-by-case basis. Thus, the state makes the respondent's argument and articulates the court's dilemma in attempting to apply the deferred disposition statute.

For all of the reasons articulated above, it is clear that the grant or denial of a deferred disposition can have a significant effect on a juvenile's liberty interest. A successful completion and dismissal of a juvenile offense can have great personal benefit. A juvenile with a clean criminal record is seen as rehabilitated and has a much better chance of adult success. Further, it is likely (though not assured) that a juvenile who

successfully completes a deferred disposition is one who is effectively out of the criminal justice system.

The personal, pro-social benefits aside, a juvenile who can obtain a deferred disposition and dismissal can also avoid the effects of "points" in determining later juvenile dispositions or adult sentencing. The difference of one point can be the difference between freedom and incarceration, between a short or suspended sentence in the local facility and a lengthy stay in a state institution.

Certainly, providing financial restitution to victims of legal offenses is a "substantial" interest of the state. All the substantial interests set forth in the statute must have weight. Requiring one purpose be met at the expense of several other legislatively enumerated substantial state interests negates the desired balancing effect of the statute.

The deferred disposition statute imposes a wealth characteristic that cannot pass intermediate scrutiny muster. A juvenile might not be entitled to a deferred disposition, but the statute asks the court to determine who, in the class of those juveniles who would otherwise qualify, can "buy" his or her freedom. The statute denies the judicial discretion it purports to promote by taking poor children out of the equation altogether. Imposing a means test on one's liberty interest violates a juvenile's right to the equal protection of the laws and is unconstitutional.

Whether applying strict scrutiny or intermediate scrutiny, however, case law is clear that members of the same class must be treated similarly. "[P]ersons similarly situated with respect to the legitimate purpose of the law" must receive like treatment. *State v. Phelan*, 100 Wash. 2d 508, 512 (1983). All members of a class must be similarly treated. See *Thurston v. Greco*, 78 Wash. 2d 424, 433 (1970). All juveniles statutorily eligible for a deferred disposition (eliminating the wealth test) must be given an equal chance to succeed. The current statute does not achieve that purpose.

Rational relationship test – minimal scrutiny

The Juvenile Justice Act has express and "equally important" purposes. As described above, those include holding juveniles accountable and providing restitution to victims. The deferred disposition statute muddles the goals, however, in such a way as to be contrary to the achievement of the act's purposes.

In analyzing and applying the statute to a juvenile who is otherwise eligible for a deferred disposition, the court cannot assume affluence or indigence. The court cannot make a determination based on an assumption of a supportive family or an absent or neglectful family. The court cannot conclude that a child who is unable to make full restitution is not being held accountable in other ways and is not being rehabilitated by probation, detention, and other sanctions.

If the court is to use a means test in exercising its discretion, then it would be a rare juvenile who would be granted deferred disposition. We assume juveniles are not financially independent as a basis for providing counsel at no cost. If the court is to apply a means test to the juvenile's family, then what definitions of solvency and ability to pay shall we use? Means testing a judicial remedy bears no rational relation to the goals of the Juvenile Justice Act. Children of affluence should not be permitted to buy relief from a criminal record, while children of lesser means suffer life-long criminal ramifications based on their indigence.

This court finds itself in the untenable position of having to decide to grant or deny deferral of disposition on the basis of information that is irrelevant, *i.e.*, whether the juvenile has, or his or her family has and is willing to expend, sufficient funds to buy a dismissal. Alternatively, the court could simply decide that the better part of discretion is to give every qualifying juvenile a chance, on the outside chance that the family will win the lottery, the juvenile will inherit, or the juvenile will be hired to consult in video game development and get rich off stock options. Conversely, the court could decide to deny all requests for deferred disposition because of a lack of evidence to determine who might pass the implied means test. Neither option requires deliberation or exercise of discretion by the court.

Granting false hope to indigent children is not a legitimate government purpose. Neither is it legitimate to sell legal advantage. At the end of a deferred disposition, however long the period of deferral, the truth comes clear: under this statute, similarly situated juveniles are not treated similarly.

This court is convinced that the circumstances of this case and countless others demand the result the court reaches today. The constitutions of the United States and the State of Washington demand the more fair and equitable result because of the constitutional frailty in the statute.